

RESEARCH APPENDIX

Date Transfer Requested: 11/30/2018 (Per: CMH)

☞ **Appendix V** ... has been added to the **2017 LRB-6071**

Appendix A ☞ LRB 17-5979

Appendix B ☞ LRB 17-5982

Appendix C ☞ LRB 17-5983

Appendix D ☞ LRB 17-5986

Appendix E ☞ LRB 17-5989

Appendix F ☞ LRB 17-5995

Appendix G ☞ LRB 17-5998

Appendix H ☞ LRB 17-6006

Appendix I ☞ LRB 17-6007

Appendix J ☞ LRB 17-6012

Appendix K ☞ LRB 17-6021

Appendix L ☞ LRB 17-6023

Appendix M ☞ LRB 17-6024

Appendix N ☞ LRB 17-6027

Appendix O ☞ LRB 17-6028

Appendix P ☞ LRB 17-6031

Appendix Q ☞ LRB 17-6036

Appendix R ☞ LRB 17-6037

Appendix S ☞ LRB 17-6038

Appendix T ☞ LRB 17-6046

Appendix U ☞ LRB 17-6047

Appendix V ☞ LRB 17-6048

Appendix W ☞ LRB 17-6049

Appendix X ☞ LRB 17-6050

Appendix Y ☞ LRB 17-6052

Appendix Z ☞ LRB 17-6059

Appendix AA ☞ LRB 17-6065

Appendix BB ☞ LRB 17-6067

2017 DRAFTING REQUEST

Bill

For: **Joan Ballweg (608) 266-8077** Drafter: **ewheeler**
 By: **Bethany** Secondary Drafters:
 Date: **11/21/2018** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Rep.Ballweg@legis.wisconsin.gov**
 Carbon copy (CC) to: **Elizabeth.Wheeler@legis.wisconsin.gov**
michael.duchek@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Final decision of an agency

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	ewheeler 11/21/2018	kfollett 11/21/2018			
/P1			lparisi 11/21/2018		State

FE Sent For:

<END>

Wheeler, Elizabeth

From: Duchek, Michael
Sent: Wednesday, November 21, 2018 10:23 AM
To: Wheeler, Elizabeth
Subject: FW: Drafting request

From: Anderson, Bethany <Bethany.Anderson@legis.wisconsin.gov>
Sent: Wednesday, November 21, 2018 10:23 AM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Subject: Drafting request

Let me know if you have any questions. Thank you!

Adding 227.47(3)

- "Notwithstanding any other provision of law, all final decisions of an agency must be approved, signed, and dated by the secretary of the agency, and in no event may a hearing examiner issue a final decision of an agency. The secretary's signature shall be placed directly above a certification stating as follows: "I hereby certify that this decision constitutes the final agency action and that this decision complies with the requirements of ch. 227. I further certify that this decision contains no standard, requirement, or threshold that is not explicitly that this decision contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.""

Bethany Anderson
Office of Representative Joan Ballweg
608.266.8077



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6048?
EAW...

11/21 (H)

OP1
LF

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

may, by rule or by an order in
a particular case, specify that

1 AN ACT ...; relating to: the final decision of an agency in a contested case
2 proceeding.

Analysis by the Legislative Reference Bureau

Under current law, an agency may ^{by an order} order by rule or in a particular case ^{Specify that} for the decision of a hearing examiner who conducts a hearing in a contested case proceeding to be the final decision of the agency. This bill prohibits an agency from delegating the authority to issue a final decision in a contested case to a hearing examiner. This bill also requires that all final decisions of an agency must be approved, signed, and dated by the secretary of the agency.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 227.46 (1) (h) of the statutes is amended to read:
4 227.46 (1) (h) ~~Make or recommend~~ Recommend findings of fact, conclusions of
5 law and decisions to the extent permitted by law.

1 **SECTION 2.** 227.46 (2) of the statutes is amended to read:

2 227.46 (2) Except as provided in sub. (2m) and s. 227.47 (2), in any contested
3 case which is a class 2 or class 3 proceeding, where a majority of the officials of the
4 agency who are to render the final decision are not present for the hearing, the
5 hearing examiner presiding at the hearing shall prepare a proposed decision,
6 including findings of fact, conclusions of law, order and opinion, in a form that may
7 be adopted by the agency as the final decision in the case under s. 227.47 (3). The
8 proposed decision shall be a part of the record and shall be served by the agency on
9 all parties. Each party adversely affected by the proposed decision shall be given an
10 opportunity to file objections to the proposed decision, briefly stating the reasons and
11 authorities for each objection, and to argue with respect to them before the officials
12 who are to participate in the decision. The agency may direct whether such
13 argument shall be written or oral. If an agency's decision varies in any respect from
14 the proposed decision of the hearing examiner, the agency's decision shall include an
15 explanation of the basis for each variance.

History: 1975 c. 94 s. 3; 1975 c. 414; 1977 c. 196 s. 131; 1977 c. 277, 418, 447; 1979 c. 208; 1983 a. 189 s. 329 (2); 1985 a. 29; 1985 a. 182 ss. 33g, 57; 1985 a. 236; Stats. 1985 s. 227.46; 1987 a. 365; 1993 a. 16; 2007 a. 1.

16 **SECTION 3.** 227.46 (2m) of the statutes is amended to read:

17 227.46 (2m) In any hearing or review assigned to a hearing examiner under
18 s. 227.43 (1) (bg), the hearing examiner presiding at the hearing shall prepare a
19 proposed decision, including findings of fact, conclusions of law, order and opinion,
20 in a form that may be adopted by the agency as the final decision in the case under
21 s. 227.43 (3). The proposed decision shall be a part of the record and shall be served
22 by the division of hearings and appeals in the department of administration on all
23 parties. Each party adversely affected by the proposed decision shall be given an
24 opportunity to file objections to the proposed decision within 15 days, briefly stating

1 the reasons and authorities for each objection, and to argue with respect to them
2 before the administrator of the division of hearings and appeals. The administrator
3 of the division of hearings and appeals may direct whether such argument shall be
4 written or oral. If the decision of the administrator of the division of hearings and
5 appeals varies in any respect from the proposed decision of the hearing examiner, the
6 decision of the administrator of the division of hearings and appeals shall include an
7 explanation of the basis for each variance. The decision of the administrator of the
8 division of hearings and appeals is a final decision of the agency subject to judicial
9 review under s. 227.52. The department of transportation may petition for judicial
10 review.

History: 1975 c. 94 s. 3; 1975 c. 414; 1977 c. 196 s. 131; 1977 c. 277, 418, 447; 1979 c. 208; 1983 a. 189 s. 329 (2); 1985 a. 29; 1985 a. 182 ss. 33g, 57; 1985 a. 236; Stats. 1985 s. 227.46; 1987 a. 365; 1993 a. 16; 2007 a. 1.

11 **SECTION 4.** 227.46 (3) (a) of the statutes is repealed.

****NOTE: I repealed this as this provision appeared to conflict with your stated intent of allowing agencies to simply adopt hearing examiner decisions. I believe some agencies do in fact have rules or practices under this provision whereby a hearing examiner's decision is considered to be the agency's and this would require a change to those practices.

12 **SECTION 5.** 227.46 (8) of the statutes is repealed.

****NOTE: This provision allows DNR and DOT to file a petition for judicial review of a decision in a contested case hearing. I have removed it in this draft because we are requiring the agency to always make its own final decision, and it would no longer seem to make as much sense for the agency to appeal the decision. Is this OK?

13 **SECTION 6.** 227.47 (1) of the statutes is amended to read:

14 227.47 (1) Except as provided in sub. (2), every proposed or final decision of an
15 ~~agency or a hearing examiner~~ following a hearing and every final decision of an
16 agency shall be in writing accompanied by findings of fact and conclusions of law.
17 The findings of fact shall consist of a concise and separate statement of the ultimate
18 conclusions upon each material issue of fact without recital of evidence. Every
19 proposed or final decision shall include a list of the names and addresses of all

persons who appeared before the agency in the proceeding who are considered parties for purposes of review under s. 227.53. The agency shall by rule establish a procedure for determination of parties.

History: 1975 c. 414 s. 15; 1977 c. 418; 1979 c. 208; 1985 a. 182 ss. 33r, 57; Stats. 1985 s. 227.47; 1993 a. 16, 491; 2003 a. 33 ss. 2376, 2377, 9160; 2015 a. 55.

SECTION 7. 227.47 (3) of the statutes is created to read:

227.47 (3) Every final decision of an agency in a contested case shall be approved, signed, and dated by the agency head and shall include a signed certification stating as follows: "I hereby certify that this decision complies with the requirements of chapter 227 of the Wisconsin Statutes and constitutes the final agency action in this matter. I further certify that this decision contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by statute or a rule that has been lawfully promulgated and that this decision contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes."

SECTION 8. Initial applicability.

(1) FINAL DECISION OF AN AGENCY. The treatment of ss. 227.46 (1) (h), (2), (2m), (3) (a) and (8) and 227.47 (1) and (3) first applies to requests for hearings made on the effective date of this subsection.

(END)



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6048/P1
EAW:kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Boo Boo
to match
compile
6074
Just remove
notes.
DONE ✓
cdc
fixed
11/30/18

- 1 AN ACT *to repeal* 227.46 (3) (a) and 227.46 (8); *to amend* 227.46 (1) (h), 227.46
2 (2), 227.46 (2m) and 227.47 (1); and *to create* 227.47 (3) of the statutes;
3 **relating to:** the final decision of an agency in a contested case proceeding.

Analysis by the Legislative Reference Bureau

Under current law, an agency may, by rule or by an order in a particular case, specify that the decision of a hearing examiner who conducts a hearing in a contested case proceeding is the final decision of the agency. This bill prohibits an agency from delegating the authority to issue a final decision in a contested case to a hearing examiner. This bill also requires that all final decisions of an agency must be approved, signed, and dated by the secretary of the agency.

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State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6048/P1
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9 (3) (a) and (8) and 227.47 (1) and (3) first applies to requests for hearings made on
10 the effective date of this subsection.

11 (END)